BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Noranda Aluminum, Inc., et al.,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. EC-2014-0223
	)	
Union Electric Company d/b/a Ameren Missouri,	)	
	)	
Respondent.	)	

AMEREN MISSOURI'S POST-HEARING REPLY BRIEF

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TABLE OF CONTENTS

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COMES NOW Union Electric Company d/b/a Ameren Missouri ("Company" or "Ameren Missouri"), and for its Post-Hearing Reply Brief states as follows:

INTRODUCTION

A review of Complainants'[1] and their allies'[2] initial briefs reveal several fundamental deficiencies in Complainants' case. First, they have failed to provide sufficient evidence for the Commission to determine whether the Company's current rates are too high, too low or just right because they failed to conduct (or to pursue a process that would have allowed them or the Staff to conduct) a comprehensive cost of service study. Without a comprehensive cost of service study, the Commission is left to guess at what the Company's revenue requirement, and ultimately its rates, should be in the future. The Commission would never increase – and never has increased – a utility's rates based upon such a guess, and not only should it not do so now (as a matter of regulatory policy) to do so would be arbitrary and capricious and would amount to setting rates without a basis in substantial and competent evidence of what the rates actually should be. Second, Complainants fail to apprehend that it is *their burden* to prove that continuation of the Company's current rates would be unjust and unreasonable because they are

[1] The complainants in this case consist of Noranda and 37 residential customers. In this brief they will be referred to as "Complainants" or "Noranda."

[2] Office of the Public Counsel ("OPC"), Missouri Retailer's Association ("MRA") and AARP/Consumers Council of Missouri (collectively, "AARP/CCM"). These are the same allies Noranda had in the rate shift complaint case just decided by the Commission.

too high.[3] That burden is a very heavy one, as the Commission itself recognizes.[4] Third, they fail to understand (or more likely, refuse to acknowledge) that when the Commission sets rates it sets them for the future based upon a test year (normally updated or trued-up), the central purpose of which is to establish reasonably *expected* earnings and expenses *during the time when the new rates would be in effect*.[5] Complainants do not even claim that the revenues, rate base and expenses reflected in their look at per-book results from 2013 (with some limited adjustments) in any way is or is expected to be reflective of the Company's revenues, expenses and rate base during the period when any new rates could be set as a result of this case. Instead, they simply say that their limited analysis shows that during 2013 Ameren Missouri earned more than its last-authorized return on equity ("ROE").

Complainants and their allies attempt to make Complainants' flawed case in reliance on three primary arguments: 1. That Mr. Meyer's limited analysis does constitute consideration of "all relevant factors" and that it can be used to set rates; 2. That even if Mr. Meyer's analysis does not constitute consideration of all relevant factors, the burden of proof shifted to Ameren Missouri to prove that its current rates should not be lowered; and 3. That if Complainants are required to meet their burden to justify a rate reduction with a comprehensive cost of service study, it will create an "absurd result" that no party other than the Staff would have the meaningful ability to bring an earnings complaint. We address each of these arguments, and their sub-points, below. We will also separately address Complainants' detailed discussion of ROE,

[3] Complainants spend considerable time in their initial brief attempting to shift this burden to the Company. As we will explain below, their attempts fail as a matter of law, as the Commission itself has repeatedly recognized, including as recently as last week in the Commission's Report and Order in the Noranda rate shift case, Case No. EC-2014-0224.

[4] *Order Denying Reconsideration and Offering Clarification*, pp. 2-3, June 11, 2014 [EFIS Item No. 126].

[5] *See, e.g., State ex rel. Southwestern Bell Tele. Co. v. Pub. Serv. Comm'n et al.*, 645 S.W.2d 44, 48 (Mo. App. W.D. 1982).

including their contention that they have proved that the Company's current cost of equity[6] is lower than determined by the Commission in the Company's last rate case.

ARGUMENT

A. Mr. Meyer's Analysis Fails to Prove What the Company's Revenue Requirement, and Ultimately Its Rates, Should Be, Because it Ignores Numerous Relevant Factors and Because it Does Not Even Purport to Establish a Reasonable Proxy for What Rates Should be in the Future.

1. Meyer's Analysis Fails to Consider, and Precludes the Commission from Considering, All Relevant Factors.

In 1957, the Missouri Supreme Court reversed a rate case decision of the Commission after the Commission failed to consider a relevant factor that bore on what the utility's rates should be. *State ex rel. Missouri Water Co. v. Pub. Serv. Comm'n*, 308 S.W.2d 704 (1957). More specifically, the Commission, based upon its misapprehension of the impact of *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 64 S. CT. 281, 88 L. Ed. 333 (1944), failed to consider the fair value of the utility's rate base (which was driven by the impact of economic conditions (including inflation)) in determining the utility's allowed rate of return.[7] In reversing the Commission's decision in that case, the Supreme Court described the requirement that all relevant factors be considered in setting rates as follows:

> The statute (§ 393.270, Par. 4) says that the Commission may consider all facts which in its judgment 'have any bearing upon a proper determination of the question [of the prices to be charged for water], with due regard, among other things, to a reasonable average return upon capital actually expended', etc. 'Due regard' to one factor, 'among other things', simply required consideration of that factor. It is *not preclusive of other relevant factors*. Indeed, the phrase 'among other things' clearly denotes that 'proper determination' of such charges is to be based upon <u>all</u> relevant factors. (*emphasis added*, court's emphasis <u>underlined</u>).

[6] "Cost of equity" is synonymous with ROE.

[7] While in *Missouri Water* the Commission properly recognized that *Hope* did stand for the proposition that the rate base component of the revenue requirement formula could be established using original cost less accumulated depreciation, that did not mean that the current fair value of the rate base, as impacted by inflation and other economic conditions, had become irrelevant for purposes of determining the return component of the ratemaking formula.

The Supreme Court's reversal of the Commission in *Missouri Water,* and its description of the Commission's duty to consider all relevant factors, demonstrates that the Chief Staff Counsel's assertion that all relevant factors are "what you say they are" is simply incorrect. Similarly, Complainants' attempt to pick and choose a few relevant factors while ignoring dozens of other ones provides an insufficient basis upon which the Commission can determine a revenue requirement and ultimately determine new rates. We know this because in *Missouri Water* the Commission decided that other factors – economic conditions, inflation and other matters that bore on fair value – were not relevant and declined to consider them, yet the Supreme Court said the failure to consider these relevant factors was reversible error:

> we must and do hold that in determining the price to be charged for (in this instance) water . . . the fair "value of the property" of the water company which the commission is empowered to ascertain under § 393.230, Par. 1, is a relevant factor for consideration in the establishment of just and reasonable rate schedules and must be considered in its proper relation to *all other facts* that have a material bearing upon the establishment of "fair and just rates" as contemplated by our statutes and decisions. (emphasis added).[8]

Finally, the Supreme Court rejected the idea that shortcuts – like those Complainants advocate in this case[9] – can be taken:

> In the instant case, the Commission frankly states that in its determination of the rate of return to which the company was entitled it excluded from any consideration whatever the evidence relating to present "fair value"; and that *in the interest of expediency, economy and the difficulty of determining such value* with any degree of accuracy, it had adopted the formula of original cost less depreciation plus materials and supplies times the rate of return equals net earnings.
>
> * * *
>
> It is true that determination of "fair value" for rate-making purposes involves vexing problems of proof. * * * But however difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse nor expediency can be substituted for the requirement that such

[8] *Missouri Water*, 308 S.W.2d at 719.
[9] An abbreviated procedural schedule and the absence of a proper comprehensive cost of service study, to name a few.

> rates be "authorized by law" and "supported by competent and substantial evidence on the whole record."[10]

In *Missouri Water*, evidence on relevant factors was provided to the Commission and the Commission incorrectly chose to ignore it. Here, the problem is even more fundamental: Complainants ignore relevant factors, and have failed to even provide evidence that bear on them, thus *precluding* the Commission from doing what it must do if it were going to change rates: consider all relevant factors.

Complainants' initial brief reveals that they now have a new theory, which they apparently endorsed after their ally MRA's counsel developed it through his opening statement and attempted cross-examination during the evidentiary hearings;[11] that is, they theorize that because Ameren Missouri keeps its books according to the Uniform System of Accounts ("USoA") a review of per-book results automatically means that "all relevant factors" were accounted for.[12] The problem for Complainants, however, is that this new theory is illogical and contrary to law, and is in fact rebutted by the record in this case.

First, if this theory were true then it would be appropriate to simply pick a 12-month period of per-book results and to then set rates on that basis because, as Complainants (and MRA) contend, necessarily "all relevant factors" would have been considered because "all USoA accounts" would have been included in the numbers. Yet all witnesses in this case agree that one cannot set rates based upon those per book numbers. Indeed, all of the parties who sponsored

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[10] *Missouri Water*, 308 S.W.2d at 719 -20 (emphasis added).

[11] This theory is not reflected anywhere in Mr. Meyer's testimony.

[12] Complainants claim (p. 14, Complainants' Initial Brief) that "all parties concede" that their case "includes consideration of every account balance" in the USoA is false. That per book results reflect all of the account balances does not mean that all accounts were "considered." To "consider" something means one "look[ed] at it carefully" or thought "about it in order to understand or decide." *Webster's New World Collegiate Dictionary* (4th Ed. 2000). Similarly, OPC's claim (p. 5, OPC's Initial Brief) that "everything that would have been considered in a rate case audit was considered" is demonstrably false given that Complainants admit that they only looked at a few accounts. They did not look at, let alone look at carefully or think about, a myriad of other accounts, including most of the 65 or so Mr. Cassidy indicated had to be looked at in order to determine what the Company's revenue requirement actually is.

witnesses in this case agree that one cannot merely rely upon unadjusted surveillance report numbers to judge whether a utility's rates are too low, too high, or just right:

Complainants (Mr. Meyer):

Q. And my understanding, though, is that raw surveillance data is not sufficient to establish rates; is that correct?

A. I agree with that.[13]

Staff (Mr. Thompson's opening statement):

Now, in this particular case, do we recommend a rate reduction? No, we don't. Why is that? Because the raw data in front of you, the surveillance reports, that's like taking a kid's temperature. Okay, we have temperature readings, but we have to interpret those. We have to understand them. We have to put them in context.[14]

Staff (Mr. Cassidy):

Q. Mr. Cassidy, you report the surveillance results for the last several quarters in your rebuttal testimony, do you not, that we've had a lot of discussion about today?

A. Yes.

Q. And, in fact, as we also discussed today, back during the last rate case there were surveillance report reporting a 10.53 percent ROE, which was above the company's authorized return at that time; is that not correct?

A. Yes. June of -- June 30th of 2012.

Q. And, in fact, it was certainly above Staff's recommendation as to what the ROE should be in that case; is that correct?

A. Yes.

Q**. And it was above the ROE the Commission ultimately determined to be appropriate for use in setting rates, correct?**

A. Yes.

Q. Mr. Cassidy, I've handed you what's been marked for identification as Exhibit 24. Do you recognize that document?

[13] Tr. p. 242, l. 7-10.
[14] Tr. p. 106, l. 16-22.

A. Yes, I do.

Q. And am I correct in describing that document as the reconciliation that the Staff filed in our last rate case that showed the differences between the request that the company had made for a rate increase and the recommendations of at least really three parties who have revenue requirement testimony in the case; is that right?

A. That's correct.

Q. And despite there being a surveillance report that indicated that we were earning more than our last authorized ROE and, in fact, more than Staff was recommending in the case, the Staff nevertheless was recommending a rate increase of approximately $202 million, correct?

A. Yes.

Q. And the Commission ultimately ordered a rate increase of approximately $260 million, right?

A. That's correct.

Q. And the Staff receives these surveillance reports every quarter, do they not?

A. They do.

Q. And you most certainly look at them, do you not?

A. Yes, I do.

Q. Is it fair to characterize your role over the last several years with respect to Ameren Missouri as lead auditor?

A. Lead auditor or case coordinator.

Q**. Okay. And I take it, Mr. Cassidy, that as you've received these surveillance reports over the last few quarters, if as the case coordinator or the lead auditor you felt that those surveillance reports indicated that the company's rates had become unjust and unreasonable, that you would be recommending to your superiors that some action be taken, would you not?**

A. Certainly.

Q. And you have not done that; isn't that true?

A. We have not done that.

Q. Because you don't believe

A. We have not done that.

Q. Because you don't believe that those surveillance reports -- you have not believed that those surveillance reports show that the rates have become unjust and unreasonable, do you?

A. Well, the surveillance reports have limited use. They require substantial adjustment in order to get a meaningful assessment.[15]

Second, it is undisputed that a great many of these accounts have never been examined to see if adjustments need to be made to them.[16] No one is contending that the literally hundreds of accounts in the USoA[17] have to be individually examined, but there is undisputed evidence in this case that there are several dozen items that can individually or collectively have a material impact on a utility's revenue requirement that may need to be adjusted from their per-book results in a given period in order to develop a proper revenue requirement for the purpose of setting rates.[18] As Mr. Cassidy testified, it is *not* true that just because the USoA may encompass all of the utility's financial transactions that all relevant factors are necessarily considered.[19]

Third, there can be no question but that Complainants have ignored certain material items. For example, wage increases for the Company's employees have already been implemented this year between January 1 and July 1.[20] In addition, hundreds of millions of dollars of plant has been placed in service since December 31, 2013,[21] and tens of millions of dollars in solar rebates

[15]Tr. p. 319, l. 5 to p. 323, l. 6 (Emphasis in underline). This is why Complainants' effort (which was front and center in their attorney's opening statement and in their initial brief) to divert attention from what this case is about (would it be unjust and unreasonable to continue the Company's current rates into the future), to what Noranda wants to talk about (the claimed past "over-earnings" they claim are shown by raw surveillance report data) fails.
[16] Tr. p. 344, l. 4-9; p. 346, l. 18-24
[17] See 18 CFR Pt. 101.
[18] Tr. p. 368, l. 21 to p. 375, l. 10.
[19] Tr. p. 344, l. 4-9
[20] Exh. 5 (Weiss Rebuttal), p. 27, l. 6-8.
[21] Exh. 6, Schedule LMB-1 (Barnes Rebuttal).

(nearly $64 million through June 30) have already been paid.[22] The plant additions impact components of the revenue requirement such as rate base and depreciation expense and income and property taxes. All of these things have already happened; they have already impacted the Company's revenue requirement, yet it is Complainants' position that all of these items can simply be ignored. They can't, as *Missouri Water* teaches, because they have or could have a "material bearing upon the establishment of 'fair and just' rates . . .." *Missouri Water*, 308 S.W.2d at 719. And because they could have a material bearing on the establishment of rates, by definition they are relevant factors that the Commission *must consider*, yet without a comprehensive cost of service study they effectively were not, and could not, be considered.

Moreover, there are dozens of other items Complainants have not examined at all. Staff auditor John Cassidy identified several dozen (approximately 65) such items[23] that have been ignored. And not only have dozen of factors relevant to establishing a revenue requirement not been considered, but no consideration whatsoever has been (or can be, because Complainants provided no evidence) given to the billing units that have to be determined before rates can be established. This includes customer counts, kilowatt-hour sales, etc. As the Commission just recognized in Case No. EC-2014-0224, "[i]n the absence of a class cost of service study, it is impossible to determine whether Ameren Missouri's current rates are now unjust and unreasonable."[24]

[22] Exh. 14. We would note that MRA's contention (essentially the only contention that it made in its initial brief) suggesting that the solar rebates should be ignored is rebutted by the fact that even Mr. Meyer accounted for solar rebates (paid in 2013) in his "analysis," as did Mr. Cassidy. Moreover, when the question in the case is whether continuation of Ameren Missouri's rates *into the future* would be unjust and unreasonable – and that is the only question in this case – one necessarily must account for the solar rebates else it would be virtually guaranteed that any new rates would fail to reflect the revenue requirement and proper rates during the future when new rates would be in effect.

[23] We address these items at pages 15 to 17 of our Initial Brief.

[24] *Report and Order*, Case No. EC-2014-0224, pp. 27-28. The same thing is true regarding billing units generally: without developing the billing units one cannot know what the rates should be. Billing units have been totally ignored by Complainants in this case.

When one gets right down to it, Complainants are not seriously contending that these factors are not relevant.[25] What they are really saying is that the Commission can, in the interest of expediency, in order to avoid the time it would take to do a proper cost of service study, to avoid "vexing problems of proof", relieve Complainants of having to do the work a utility has to do to justify a rate increase; i.e., that the Commission can simply do what Complainants want it to do, Complainants' burden of proof and the law be damned. We repeat: "[H]owever difficult may be the ascertainment of relevant and material factors . . ."[26] the Commission must do the work. It must ascertain those factors, and it must consider them. It can't ignore them, even if that means that Complainants can't get a rate decrease on the schedule they want – in about 6-7 months. As we will discuss below, there is no unfairness in this.

2. The evidence adduced by Complainants fails to provide the evidence the Commission needs to determine if rates should be changed.

Not only have dozens of relevant factors been completely ignored, but even the limited evidence Complainants have provided is insufficient to allow the Commission to determine if a rate change is warranted. As discussed in our initial brief, rate setting is a prospective exercise. The Commission is obligated as a matter of law to make an "honest and intelligent forecast" of what the rates need to be in the future to provide a reasonable opportunity for the utility to earn a fair return.[27] How this requirement is met has been expressed by the Commission and the courts on numerous occasions. When one boils down those statements, it is clear that what the Commission must do is use a proper test year "to create a reasonably *expected* level of earnings, expenses and investment '*during the future period during which the rates to be determined . . .*

[25] Complainants even concede that items that have not yet happened (rate base that will soon go into service) are relevant. Tr. p. 57, l. 21 to p. 58, l. 2 (Complainants' Counsel conceding that Complainants are not suggesting the future rate base additions in 2014 are not relevant). Certainly Complainants would have to concede that items that have already happened but which have not been considered by them are relevant.
[26] *Missouri Water*, 308 S.W.2d at 719-20.
[27] *Missouri Water*, 308 S.W.2d at 719 (quoting the Commission's Report and Order in the case on appeal).

will be in effect'" (court's emphasis).[28] Inherent in the requirement that the rates be set for the future based on information that provides a reasonable proxy for what future conditions will be is the necessity to consider evidence about those future conditions, and to consider whether a past period that is being examined (here, 2013) is reasonably representative of the future period when rates could be in effect (at the earliest late this year and in 2014).

As earlier noted, Complainants do not even contend that the partially-adjusted 2013 per-book examination that has been done provides any proxy at all, let alone a reasonable one, for what revenues, expenses and rate base are reasonably expected to be starting late this year and beyond. Complainants do not dispute that more than $700 million of plant additions were already in service since the last rate case through April of this year, do not dispute that it is expected that another approximately $1 billion of plant will go into service between June 1 and December 31 of this year,[29] do not dispute that the wage increases noted earlier have occurred, that fuel prices under long-term contracts have already increased in 2014, or that tens of millions of dollars of solar rebates beyond the roughly $30 million ($10 million of revenue requirement) taken into account by Mr. Meyer from 2013 have already been paid in 2014, with tens of millions of dollars more likely to be paid before 2014 is over.

Not only do Complainants not dispute any of those facts, but they admit that (a) they do not even know whether the "over-earnings" situation Mr. Meyer contends existed in the past may have already flipped to an "under-earnings" situation and (b) that they knew all along that when looked at prospectively there were substantial questions about whether the so-called "over-

[28] *Southwestern Bell*, 645 S.W.2d at 48, *quoting with approval* the Commission's own statement of the purpose of a test year in the case on appeal. Complainants' claim (initial brief, p. 6) that it and the Staff used a "test year" is false. A test year, by definition, consists of a matching of *all* material revenues, costs and rate base items (adjusted as appropriate) over a period (and updated or trued-up if needed, which is typically the case) during a period that one can *reasonably expect to be representative of the future*. As noted, Complainants don't even claim that 2013, with the limited adjustments that were done, constitutes such a period. And as noted below, the Commission itself declined to adopt a test year in this case.

[29] They also don't dispute that as of May 30, 54% of the dollars on the projects reflecting that $1 billion of plant additions had already been spent.

earnings" would be sustainable. When asked if he had objective evidence to establish that the Company is "over-earning" at this time (as of the evidentiary hearings in late July), Mr. Meyer admitted he did not, although he complained the reason he did not is because the Company had not given him the "objective evidence."[30] Of course, Mr. Meyer's qualifier was a convenient way to dodge the question he was being asked, particularly when one considers that if in fact there was information that Mr. Meyer claimed he needed that somehow the Company did not give to him when it should have, one would have expected Noranda to have sought to compel a response to its data requests. It did not. As the Chairman pointed out in his questioning of Mr. Meyer, if Noranda wanted the information, then it should have filed a motion to compel. That is, in the Chairman's words, "what [Noranda's] lawyers are for."[31]

The Commission should also take Mr. Meyer's complaints about what it claims the Company did not give it with a grain of salt. While Mr. Meyer did not make his complaint about not obtaining information until the evidentiary hearing – effectively preventing the Company from telling its side of the story, which is far different than Mr. Meyer's – the Company was able to address a second allegation by Mr. Meyer that the Company did not give Mr. Meyer information he needed, and established that Mr. Meyer's contention that he did not have data he said the Company did not give him was incorrect. Specifically, at another point during the hearing, Mr. Meyer contended that he asked the Company to list for him how every revenue and expense on the Company's books had changed as compared to the figures relied upon by the Commission when it last set the Company's rates. The Company responded by advising Noranda

[30] Tr. p. 208, l. 21 to p. 209, l. 2. Mr. Meyer's admission – that he does not even know if the Company is "over-earning" is yet another reason why Complainants have woefully failed to meet their burden of proof in this case. AARP/CCM mis-state Mr. Meyer's testimony on this point, when they claim that he testified that with the investments Ameren Missouri contemplates making by December 31 of this year, Ameren Missouri would still be "over-earning," citing Mr. Meyer's surrebuttal testimony. Indeed, what Mr. Meyer said was with those investments "I believe that Ameren Missouri's earnings would not continue to be excessive" (emphasis added). Exh. 2, p. 19, l. 3-6.

[31] Tr. p. 224, l. 23-24.

that Noranda already possessed the information needed to make that comparison (it is not a comparison the Company had done, nor was the Company obligated to do Complainants' work for them). During the evidentiary hearing, Mr. Meyer claimed (without explanation) that he did not have the needed information, implying that the Company withheld information that he needed. However, as Mr. Weiss explained, all Mr. Meyer needed to make the comparison he asked the Company to make for him were two things: the Staff's run from the last rate case that showed the figures used to establish the revenue requirement the Commission adopted (which all parties to that case (Noranda included) have), and Ameren Missouri's FERC Form 1 for 2013, which is publicly available to anyone who wants to download it from FERC's website.[32] Mr. Meyer's attempts to blame the Company for his lack of proof and analysis falls flat.

Mr. Meyer also admits that he and his colleagues at Brubaker and Associates knew all along that on a prospective basis – which even Mr. Meyer admits is how rates are set – it would be difficult to sustain the contention that Ameren Missouri's rates were too high:

> **Q. Could you turn to page 24 of our deposition. Beginning at line 2 it says,**
>
> *Question: Has Mr. Rackers ever expressed any concern about any aspect of the complaint case?*
>
> Answer: I think we both have concern about the sustainability, which I described in my surrebuttal testimony, given the projected levels of investment that are discussed to be implemented by Ameren.
>
> *Question: What do you mean by that? Can you explain a little more?*
>
> Answer: Ms. Barnes Claims that between May 1, 2014 and December 31, 2014, that Ameren will invest approximately $1 billion in plant [in] service. And that's what I described in my surrebuttal testimony is that, given that level of investment, it will be hard to maintain an overearnings situation as we've depicted it here in my surrebuttal and my direct.
>
> *Question: Wouldn't – won't it really be – if that level of investment is made, wouldn't it be impossible to maintain an overearnings situation?*

[32] Tr. p. 499, l. 20-23; Tr. p. 500, l. 11 to p. 501, l. 4.

Answer: I agree with you. It would be very difficult. If the premise is for the basis of changing rates on a going-forward basis, that's correct.

Q. Did I read that correctly?

A. You did.

Q. And when you refer to Mr. Rackers, can you explain who Mr. Rackers is?

A. The consultant with BAI.[33]

The law says that rate setting is a prospective exercise, and so does Mr. Meyer, who unqualifiedly agreed that the purpose of ratemaking is not to make up for past under-earnings or over-earnings, but rather, it is to set rates that will be appropriate for the future periods in which they apply.[34]

B. Ameren Missouri Bears No Burden in this Case.

Noranda, citing only to general explanations of the burden of proof, makes the conclusory allegation that Ameren Missouri somehow became "compelled to controvert the evidence in Complainants' case in chief."[35] Noranda both misapprehends the nature of the evidence it presented (and failed to present) and the law governing burden of proof.

The Commission has dealt with these very issues on numerous occasions, including in several complaint cases. For example, Noranda cites two Commission complaint cases from 2008, *Howard v. Union Electric Company* and *Johnson v. Missouri Gas Energy*, for the proposition that if "Ameren fails to produce sufficient evidence to rebut Complainants' evidence,

[33] Tr. p. 206, l. 8 to p. 207, l. 14. AARP/CCM try to conflate concepts applicable when the Commission is actually using a developed revenue requirement to set rates (that a rate base item must be in service to be included in the revenue requirement calculation – must be "known and measurable") with the entirely different question here: would it be unjust and unreasonable to continue the current rates into the future. AARP/CCM Initial Brief, p. 6. The expenditures already made this year, and the huge amount of plant-in-service that will be used and useful in just the next 2-4 months, is highly relevant to the latter question, which is *the* question at issue here.
[34] Tr. p. 213, l. 7-13.
[35] Noranda's Initial Brief, p. 4.

then Complainants will have met their burden of proof."[36] But neither case says that. Indeed, both cases state as follows:

> Nor can it be said that the burden of production would ever shift to MGE. In fact, MGE is not required to produce any evidence. It is not that the two parts of the burden of proof [production and persuasion] ever shift from Ms. Johnson [the complainant], she always bears those burdens, but if Ms. Johnson offers sufficient evidence to prove MGE more likely than not unlawfully denied her gas service [or whatever it is the complainant has to prove], and MGE fails to produce sufficient evidence to rebut Ms. Johnson's evidence, then Ms. Johnson will have met her burden of proof.[37]

See also Report and Order, Case No. EC-2014-0224, p. 24 (decided just last week) (the burden of proof "cannot shift to the respondent utility").

In the present case, Noranda has at most proved that in the past – in 2013 – Ameren Missouri's per-book results with limited adjustments indicate that Ameren Missouri earned more than its last-authorized ROE. Even if that is true, it does not prove what Noranda must prove in this case; that is, it does not prove that continuation of Ameren Missouri's current rates would be unjust and unreasonable, as we have explained above.

There is another fundamental reason why Noranda's claim that Ameren Missouri had to rebut its "case in chief" fails. Noranda's "case in chief" was reflected by Noranda's direct testimony. *Cf. 4 CSR 240-2.130(7)(A)*, which requires that a party's direct testimony contain that party's "<u>entire</u> case-in-chief" (emphasis <u>underlined</u>). And as noted, its direct testimony failed to prove what an earnings complaint must prove. It did not prove – nor did it even purport to prove – that the results it analyzed on a limited basis for the 12 months ending September 30, 2013, had anything to do with what revenues, expenses and rate base would be when any new rates set as a result of this case would be in effect. Moreover, Noranda totally abandoned even that inadequate evidence when it filed its surrebuttal testimony. So even had the Company "rebutted it" in some

[36] *Id.*
[37] *Johnson*, 2008 WL 4922366.

manner other than the manner in which it did (by pointing out that it tells the Commission nothing about the continued justness and reasonableness of continuing the Company's current rates), that rebuttal would have been rendered moot on July 3 when Noranda abandoned its case-in-chief entirely.

So is it now Noranda's contention that Ameren Missouri has to somehow prove a different cost of service in rebuttal of Noranda's new (but still inadequate) surrebuttal analysis, presented 25 days before the evidentiary hearings in this case were to start at a time when Ameren Missouri had no further opportunity to prepare and file testimony?

The answer to that question is "of course not." The Commission recognized this when it denied Noranda's belated request to establish a test year that didn't match the case Noranda filed in the first place:

> The Commission establishes a test year at the start of a general rate proceeding to allow all parties to use a common frame of reference to analyze the utility's expenses and revenues while considering all relevant factors in establishing a just and reasonable prospective rate for the utility. However, this is not a general rate proceeding, rather it is a rate complaint.
>
> The Complainants claim that establishment of a test year for this rate complaint "is necessary for the Commission and the parties to identify and quantify the issues presented in this case." The Complainants bear the burden of proving that they are entitled to relief pursuant to their complaint. Their complaint, and the direct testimony they filed along with that complaint, identified the issues and timeframes presented. The established procedural schedule does not allow for the presentation of additional direct testimony, so no new issues can be raised. Since there will be no additional direct testimony and there can be no additional issues, the establishment of a test year and true-up period at this point in the proceedings is unnecessary.[38]

[38] *Order Regarding Request to Set Test Year and True Up*, pp. 1-2, issued in this case on May 14, 2014 [EFIS Item No. 101]. Noranda arguably violated the Commission's May 14, 2014 Order when it in effect tried to present new direct testimony (an entirely different case-in-chief) and to raise new issues. No matter – it still failed to even allege that its limited analysis of 2013 per-book results would tell the Commission anything about what a proper revenue requirement would be when any new rates would be in effect, and its limited analysis completely failed to consider many obvious relevant factors that must be considered.

Noranda chose the case it wanted to file, it chose the period it wanted to examine and it chose the timeframe within which it demanded that the Commission decide if it had met its burden. While the Commission extended the requested time frame slightly, Noranda effectively was given what it asked for: a schedule that would have reset rates almost twice as fast as a rate increase request by a utility is ever processed, even though rate increase cases are statutorily required to be given priority by the Commission. Noranda might have shown that during 2013 the Company earned more than its last-authorized return, but it didn't prove that continuation of the Company's existing rates would be unjust and unreasonable. It really didn't even try to do so. That is clearly why, in its initial post-hearing brief, that it has thrown a Hail Mary pass in an attempt to relieve itself of the very heavy burden the Commission said would have to be met and which, given the case Noranda chose to file, Noranda cannot meet. The Company had no burden, and need not have produced any evidence, although in fact it did, as did the Staff.

C. Requiring a Comprehensive Cost of Service Study Addressing All Relevant Factors in Order to Change Rates Up or Down Does Not Create an "Absurd Result."

Complainants and their allies complain that if they are held to the same standard that all agree a utility is held to when it seeks a rate increase then effectively they can never pursue an earnings complaint and that therefore to hold them to the same standard violates the letter, or at least the spirit, of the complaint statutes. Of course, not holding them to the same standard implicates all kinds of due process and equal protection concerns, not to mention raises the issue of whether the Commission would act arbitrarily and capriciously if it orders a rate decrease based upon process and proof far less reliable than the proof it requires in order to raise rates. But putting those issues aside, and based on an examination of the statutes governing complaints, one concludes that Complainants' contention that a different standard must apply else a complaint cannot be maintained is just not true. Moreover, the facts of this case, particularly

considering it was brought by a large corporation and had as one of its allies an association of industrial customers[39] which itself is made up of large, multinational corporations (Monsanto, Anheuser-Busch, Boeing), as well as Noranda and others, also belies their contentions.

An understanding of the law is essential to these questions. First, Complainants and their allies continue to incorrectly claim that Section 393.130.1 provides authority for a complaint and that it gives them some kind of "right" to cause a change in rates to be made. This same mistake of law was made by OPC in Case No. EC-2014-0224. As we explained in our Reply Brief in that case, by definition, the rates Ameren Missouri is charging today that were *set by the Commission* are just and reasonable unless and until the Commission changes them. When a complaint regarding rates is brought the allegation is not – and cannot be as a matter of law – that the utility is or has in some fashion violated the law; that is, as long as the utility is charging the rates the Commission set, as is the case here. *See* Ameren Missouri's Reply Brief, Case No. EC-2014-0224, pp. 3-7.

Second, when a complaint about earnings is brought, by whomever it is brought (Staff, 25 or more customers, OPC, a municipality), the complaint statutes contemplate that it is *up to the Commission* to investigate, and then it is up to the Commission to decide whether rates will be changed. As the Staff explains in its initial brief, Section 393.260.1 requires that the *Commission* investigate, and subsection 2 of the statute tells the Commission that it may use its Staff to "examine or cause to be examined the books and papers of" the utility. Consequently, the notion that there is something wrong with or "absurd" about requiring that a comprehensive cost of service study that allows the Commission to properly *consider* all relevant factors, even if it were true in some instances that only the Commission's Staff can conduct such a study, is simply wrong. Not only is there nothing wrong or absurd about it, but the PSC Law specifically

[39] The Missouri Industrial Energy Consumers.

contemplates that in some cases a Staff cost of service study, and only a Staff cost of service study (and any study the respondent utility might choose to do) will be done. Even Complainants admit that such a process was available to them:

Q. So you would agree that under – under our rules, the Commission could have ordered Staff to do they type of investigation that would have resulted in a full comprehensive cost of service analysis?

A. Yes, you could have.

Q. But the Complainants did not request that from the Commission, did they?

A. No.[40]

Third, at least on the facts of this case, it is simply not true that Complainants could not have conducted a proper study and thus at least enabled the Commission to consider all relevant factors. Not only is the consultant Complainants chose, Brubaker and Associates, capable of doing such a study, but there are other consultants that are capable of doing so as well.[41] Moreover, Complainants disabled themselves from adducing the evidence that they needed to carry their burden of proof on this complaint, and they did this in at least two ways. First, they insisted on a procedural schedule that was unworkable. Why should an earnings complaint case be concluded in only five to six months when a rate increase case is never completed in less than 11 months? As the Staff put it, "By persuading the Commission to adopt a very short procedural schedule, despite Staff's warning that it could not perform an audit or other necessary general rate case activities in that time frame, the Complainants themselves have ensured that a very real question will necessarily exist as to whether the Commission has indeed considered 'all relevant

[40] Tr. p. 230, l. 7-15.
[41] Tr. p. 196, l. 5-11 (Mr. Meyer admitting Brubaker is qualified); Tr. p. 220, l. 21 to p. 221, l. 4 (Mr. Meyer admitting that the real issue is whether Brubaker would take the time to do the work, or whether a client would be willing to pay for it – but those issues are not an issue of capability. To the contrary, they are an issue of willingness); Tr. p. 413, l. 18 to p. 414, l. 5 (Mr. Cassidy pointing out that another consulting firm was engaged by the Staff to do a full revenue requirement in one or more gas rate cases).

factors' . . .."[42] Finally, Complainants didn't even seriously try to adduce the evidence they needed to adduce to meet their burden. They didn't ask a single data request until more than two months after the case was filed. They didn't do what the statutes contemplated they can do: ask the Commission to investigate and to use its Staff (as noted, *see* Section 393.260.2) to investigate and to properly examine the Company's books to see if a rate change was warranted. And they abandoned their direct case when they filed surrebuttal.

In summary, if Complainants wanted to put on a proper case to establish that continuation of the Company's current rates would be unjust and unreasonable, they could have done so. They chose not to make the commitment necessary to do so, and the consequences of that choice – the failure to meet their burden of proof – falls on them. And similarly, even if they were not willing to make the necessary commitment, they, or any other complainant, can do what the statutes contemplate: file a complaint and ask the Commission to have its Staff investigate and do a proper cost of service study. That this may take more time than the complainant likes is not unfair, and there is nothing absurd about it. Expedience, convenience, shortcuts – are not allowed. Instead, Complainants must meet their burden of proof, and the Commission must take the time to investigate and consider all relevant factors. Otherwise, the Commission is left to make what would amount to a guess about whether a rate change is warranted at all and, if so, what that rate change should be. [43]

D. Complainants have failed to carry their burden to establish that Ameren Missouri's last-authorized ROE is unreasonable.

As discussed earlier in this reply brief, Complainants have the burden to prove that continuation of the Company's current rates would be unjust and unreasonable because they are

[42] Staff's Initial Brief, p. 8. For the reasons explained above, the Commission has not done so, and cannot do so, on this record.
[43] Tr. p. 498, l. 11-18; Tr. p. 386, l. 16-23 (Both Mr. Weiss and Mr. Cassidy confirming that the Commission would be guessing without a proper, comprehensive cost of service study).

too high. We have already explained why the case that they have put on fails to meet that burden, irrespective of any issues relating to ROE. This presents a different case than one where the utility has submitted a comprehensive cost of service study and presented evidence on all relevant factors – including on ROE – and is asking the Commission to increase its rates based thereon. In that scenario, the Commission is attempting to determine an appropriate ROE for use in setting the new rates. In this case, the inquiry is different. The initial question for the Commission in this case, as it pertains to ROE, is whether Ameren Missouri's currently authorized ROE is unreasonable. If the answer to that question is it is not unreasonable, then the Commission's inquiry ends. Further, the level of ROE is not an isolated single issue upon which rates are to be set, but rather exists within the broader context of all relevant factors. Accordingly, if 9.8% is found to be unreasonable *and* if upon examination of all relevant factors continuation of Ameren Missouri's current rates were shown to be unjust and unreasonable then, and only then, would the Commission need to go through the testimony offered in this case to determine an appropriate ROE because only then would the Commission even reach the question of what new rates should be.

Applying that standard to this case, the Complainants have failed to demonstrate that Ameren Missouri's currently authorized ROE is unreasonable. Even if we are to view ROE in isolation, the current ROE allowed by the Commission continues to be supported by the evidence in this case; both the Complainants' expert testimony and that of Ameren Missouri provides evidentiary foundation for a 9.8% ROE. Further, if anything, the evidence in this case demonstrates that the ROE, to the extent it would require re-evaluation, would in fact be higher, not lower.

In this case, the initial question can be answered by the Complainants' own expert witness, who admitted that not only is Ameren Missouri's currently authorized ROE not

unreasonable but he goes beyond that to state the 9.8% is reasonable.[44] The Commission's inquiry on this issue can end with that admission.

1. Authorized ROEs Do Not Reflect the Downward Trend Claimed by Complainants.

Complainants argue that there exists a downward trend in authorized ROEs since Ameren Missouri's last rate case. This allegation is the faulty foundation upon which lay the Complainants' claims regarding ROE. The fact is, any trend that exists is overstated in Complainants' arguments and, in direct contrast to Complainants' allegations that ROEs are trending lower, the evidence clearly and unequivocally demonstrates that authorized returns are in fact moving upward in the second quarter of the year.

Complainants allege an average for authorized ROE decisions of 9.57% for the first three months of 2014. A closer look demonstrates serious deficiencies in this statement. Looking at Exhibit 28, which is an update of the same document relied upon by Mr. Gorman in his rebuttal testimony, it becomes obvious that his 9.57% average includes several delivery-only utilities (versus vertically integrated utilities, like Ameren Missouri, which own generation assets.) Mr. Hevert explained that it is inappropriate to include delivery only utilities in a ROE average as they have very different and lower risks than are faced by vertically integrated utilities such as Ameren Missouri, in part because they don't have the operating, financial and environmental risk associated with owning generation.[45] One need only look at proposed regulations such as the Greenhouse Gas regulations recently proposed by the USEPA under Section 111(d) of the Clean Air Act to recognize the significantly greater risks faced by vertically integrated electric utilities like Ameren Missouri. On page 5 of Exhibit 28, all ROE decisions in the first quarter of 2014 are listed. It is first necessary to remove the Virginia decisions (which involve a surcharge that

[44] Tr. p. 300, l. 11 to p. 301, l. 23.
[45] Tr. p. 518, l. 1-5.

makes them inappropriate to include in the comparison and which Ameren Missouri and Complainants both agree should be removed)[46] and to remove all of the delivery-only utilities (for the reasons noted above). These are identified by the notation of "D" in the far right-hand column of this chart.[47] Once that is done, the average return for vertically integrated utilities in the first quarter of 2014 is 9.86%.[48] Note that Ameren Missouri's currently authorized ROE is just lower than this average, demonstrating that it is not unreasonable.

Authorized returns in the second quarter also support the reasonableness of Ameren Missouri's current ROE and disprove Complainants' assertion that authorized ROEs are trending down. After removing the delivery-only utilities from the second quarter results, the average authorized ROE is 10.1%.[49] Complainants' brief asserts that the uptick was due to "anomalous results that do not reflect the current market cost of equity," but an examination of the record reveals that Mr. Gorman actually testified that the ROE average was lower if delivery only utilities were included in the calculation.[50] This, of course, has nothing to do with whether the vertically integrated utility results contained anomalies. It is worth noting that both the first quarter and second quarter RRA reports contained a discussion of why the Virginia decisions were higher than average.[51] The second quarter RRA information contains no additional notation about any unusual ROE decisions issued in the second quarter, indicating that there is no anomaly that RRA believes should be used to justify removing any of the second quarter vertically integrated results from the average. Of course, even if one ignored the highest ROE

[46] Tr. p. 517, l. 19-25.
[47] Exh. 28, p. 7.
[48] Exh. 28, p. 5. 9.75% (Northern States Power-Minnesota) plus 9.96% (Southwestern Public Service) equals 19.71; divide that sum by 2 to find the average of 9.86%.
[49] Exh. 28, p. 5. 9.8% (Entergy Texas) plus 10.4% (Wisconsin Power and Light) equals 20.2; divide that sum by 2 to find the average of 10.1%.
[50] Tr. p. 292, l, 14 to p. 293, l. 15.
[51] Exh. 28, p. 1.

from the second quarter results, the average ROE is still 9.8%[52], which is also Ameren Missouri's currently authorized ROE. Either way, it is clear that the Company's current ROE is not unreasonable.

One last point about the RRA data – regardless of any trend that might or might not exist, if one looks at the natural gas utility ROEs for the second quarter, they are, on average, higher than Mr. Gorman's recommendation (9.4%) for Ameren Missouri's electric operations in this case. Second quarter ROEs averaged 9.84% for natural gas utilities.[53] In fact, of the eight reported decisions for the second quarter, only one natural gas ROE result was lower than Mr. Gorman's recommendation for Ameren Missouri in this case and of the 14 reported for the year, only three are lower than Mr. Gorman's recommendation in this case.[54] Yet authorized returns for natural gas utilities are generally lower than for vertically integrated electric utilities.[55] This data point (natural gas authorized ROEs) demonstrates that Mr. Gorman's recommendation in this case is unreasonably low and should be rejected.

Complainants next argue that despite the (alleged) decline in authorized ROEs, utilities have ample access to capital on reasonable terms and prices, which they assert means that lower authorized ROEs are not a concern for investors. Access to capital is a statement about the cost of debt – what can a utility borrow and at what cost. As Mr. Hevert explained, cost of debt and cost of equity are different in fundamental ways. Cost of debt is a contractual obligation and can be directly observed. Cost of equity, on the other hand, is neither. Further, equity investors have a claim on cash flows only after the debt holders are paid, thus there is inherently more uncertainty for which a higher return is required by equity holders.[56] Ameren Missouri does not

[52] Exh. 28, p. 5.
[53] Exh. 28, p. 6.
[54] Exh. 28, p. 6.
[55] Tr. p. 520, l. 15-21.
[56] Exh. 7, Hevert Rebuttal, p. 3, l. 17 to p. 4, l. 14.

dispute that it can borrow at reasonable rates, but the inference Complainants draw from that fact is incorrect.

Finally, as another point to support Complainants' claim of a downward trend in authorized ROEs, Complainants compare Mr. Hevert's recommendations in this case to those made in Ameren Missouri's last rate case and points out that his recommendation has decreased. The facts don't line up to support this claim. Mr. Hevert's recommended range was 10.25% - 11.00% with a point estimate of 10.5% in the Company's last rate case and 10.2% - 10.70% with a point estimate of 10.4% in this case.[57] Mr. Hevert's recommended ranges from the two cases overlap and his specific point recommendation only moved 10 basis points.[58] Mr. Hevert's recommendations are consistent and stable between the two cases and do not support Complainants' claim of a downward trend much less provide support for decreasing Ameren Missouri's authorized ROE.

2. If the Commission Were in a Position to Determine a New ROE for rate-setting purposes, the evidence demonstrates it should be higher, not lower.

Although the Commission does not need to make a choice between Mr. Hevert and Mr. Gorman's analyses, if one were to do so, the weight of the evidence indicates that Ameren Missouri's ROE should be increased rather than decreased, as the following discussion of the modeling results in evidence in this case demonstrates.

a. *DISCOUNTED CASH FLOW (DCF)*

Complainants first criticize Mr. Hevert's DCF analysis by arguing that he applied more weight to the high-end results than the low-end results. This attempt to discredit Mr. Hevert ignores the reasons behind his use of informed, professional judgment in developing his opinion

[57] Case No. ER-2012-0166; Exhibit 22, Hevert Surrebuttal, p. 38, l. 13-15.
[58] The 35 basis point drop cited in Complainants' brief refers to Mr. Hevert's initial ROE recommendation of 10.75% in ER-2012-0166 (ER-2012-0166; Exhibit 20, Hevert Direct, p. 48, l. 10-12). However, his final recommendation was 10.5% (ER-2012-0166; Exhibit 38, p. 38, l. 13-15).

of Ameren Missouri's current cost of equity. The mean low Constant Growth DCF results were in the range of 8.2% to 8.4%.[59] When compared to the authorized ROE results found in the RRA reports discussed above, these ROE results appear so far below the average as to be given less weight. Additionally, the mean high results were within the range of the 10.95% authorized for Georgia Power in 2013, indicating that Mr. Hevert's recommendation, even though he gave more weight to the high end of his results, is the more reasonable and rational interpretation of the range.[60] Mr. Gorman uses a median result, arguing that solves problems of low and high end results. If the results were equally out of proportion with currently authorized ROEs, that statement might be true. But, as in this case, when only one side of the range is less than reasonable, simply using a median does not solve the disparity. Mr. Hevert solves that problem by weighting the end result towards the more reasonable side of the result range.

In commenting on Mr. Hevert's multi-stage DCF analysis, Complainants make two main arguments. First, they incorrectly accuse Mr. Hevert of utilizing a quarterly compounding growth methodology. Complainants' argument is based on an incorrect assumption, which a careful reading of Mr. Hevert's rebuttal testimony corrects. Mr. Hevert used a mid-year convention, which is a more reasonable approach to accounting for dividends and is common practice in DCF modeling.[61] The second criticism centers on Mr. Hevert's growth rate, while ignoring the fact that Mr. Gorman's growth rates, while applied to years 11 through 200 (years 2024 through 2213) of his model, come from only one year (year 11 representing 2024) from the Blue Chip forecast.[62] It is not logical that perpetual GDP growth should be based solely upon data from the year 2024. Mr. Hevert, on the other hand, incorporated estimates of long-term

[59] Exh. 7, RBH Schedule 9.
[60] Exh. 7, RBH Schedule 14, p. 19.
[61] Exh. 7, p. 15, l. 15 to p. 16, l. 8.
[62] Exh. 7, p. 16, l. 20 to p. 17, l. 4.

growth for a time period beyond that represented by the Blue Chip forecast,[63] making it the more logical and superior estimate of long-term growth projections.

b. *RISK PREMIUM*

Mr. Gorman's risk premium analysis is too arbitrary and flawed to be accepted by the Commission. Significantly (and as was rejected by the Commission in Ameren Missouri's last rate case), Mr. Gorman's analysis relies upon the fourth lowest and highest risk premium in the range of authorized ROEs, which in this case is tied to observations in 1987 and 1991.[64] Just as Mr. Gorman had done in Ameren Missouri's last rate case, his methodology resulted in reliance upon years that are far remote from 2014.[65] And just as was acknowledged by the Commission in Ameren Missouri's last rate case, small changes to Mr. Gorman's methodology would increase the final results.[66] For all of the reasons the Commission criticized Mr. Gorman's reliance on this methodology in Ameren Missouri's last rate case, it should not accept this arbitrary (although repeated) methodology in this case.

Beyond this flaw, Mr. Gorman once again gives weight to results that are well below any ROE ever authorized. Mr. Hevert's rebuttal points out that of the 1,421 electric utility authorized ROEs listed, the lowest was 8.72%. Mr. Gorman's analysis gives specific weight to an ROE estimate that is almost 50 basis points lower than even that ROE.[67] Giving 30% weight to a result that is that much lower than the lowest ROE granted strongly indicates that Mr. Gorman's analysis is flawed and unreasonably low.

Mr. Hevert's rebuttal testimony points out the inverse relationship between interest rates and the equity risk premium results. His testimony points to work done by Dr. Roger Morin in

[63] Exh. 7, p. 17, l. 5-12.
[64] Exh. 7, p. 28, l. 5 to p. 29, l. 4.
[65] *Report and Order*, Case No. ER-2012-0166, ¶19, p. 70.
[66] Exh. 7, Schedule RBH-8 p. 4.
[67] Exh. 7, p. 33, l. 5-11.

his book, *New Regulatory Finance*, as well as in a study by Maddox, Pippert and Sullivan.[68] In fact, this point is demonstrated by an examination of Mr. Gorman's own data.[69] Revising Mr. Gorman's estimates using this information increases them well above his recommended 9.4%, indicating the unreasonableness of his risk premium results.[70]

c. *CAPITAL ASSET PRICING MODEL (CAPM)*

When one compares Mr. Hevert's CAPM results against historical data, Mr. Hevert's expected market return is highly consistent with that historical data. While Mr. Hevert's results are consistent with historical experience, Mr. Gorman's estimates do not enjoy the same high level of consistency.[71] This fact points to the reasonableness of Mr. Hevert's recommendation and to the unreasonably low nature of Mr. Gorman's recommendation.

Setting aside the problem with Mr. Gorman's results, if the Commission were to accept Mr. Gorman's analysis, it would also have to acknowledge that the sustainable growth estimates are currently well above historical averages and thus support Mr. Hevert's long term growth outlook (used in Mr. Hevert's DCF analysis) and contradict the Complainants' criticism of Mr. Hevert's GDP growth outlook rates as being higher than consensus views.

3. **Mr. Gorman's Proxy Group is Not Appropriately Reflective of Ameren Missouri.**

Beyond the criticisms of Mr. Gorman's results for DCF, Risk Premium and CAPM methodologies, Mr. Hevert expressed reservations about the proxy group chosen by Mr. Gorman. While some of the criteria used by Mr. Gorman to choose his proxy group is similar to that used by Mr. Hevert, Mr. Gorman included several companies which caused him to pick a proxy group that is not sufficiently comparable to Ameren Missouri. For example, Mr. Gorman included

[68] Exh. 7, p. 31, l. 1 through p. 32, l. 2.
[69] Exh. 7, p. 32, l. 3-21.
[70] Exh. 7, p. 32, l. 12-13.
[71] Exh. 7, p. 20, l. 17 through p. 21, l. 10.

Edison International, which had recorded a loss of almost $2 billion after placing its generation assets (owned by an unregulated subsidiary) in bankruptcy and recorded a one-time tax earnings charge related to the impairment of certain generation assets.[72] Ameren Missouri has nothing comparable to those events. Mr. Gorman decided to include Consolidated Edison and UIL Holdings, even though both of these utilities are principally delivery only utilities and are not vertically integrated utilities.[73] Schedule RBH-2 summarizes the reasons why several of the companies in Mr. Gorman's proxy group are not representative of Ameren Missouri. Finally, Mr. Gorman included Ameren Corporation in his proxy group, which invokes a type of circular logic of relying upon the company for which the Commission is setting an ROE result to determine what that ROE result should be. In order to avoid that result, Ameren Corporation should be excluded from the proxy group.[74] In all, there are at least 12 companies in Mr. Gorman's proxy group which were included inappropriately and which should have been removed in order to develop a proxy group that is representative of Ameren Missouri.[75]

CONCLUSION

Despite Complainants' flawed arguments to the contrary, it is Complainants who bore the burden to establish that continuation of Ameren Missouri's current rates would be unjust and unreasonable. Based on the case that they chose to file, including the process and timing they insisted upon, they failed to present evidence necessary to allow the Commission to consider all relevant factors and thus failed to meet their burden as a matter of law. The Complaint should be denied.

[72] Exh. 27, p. 9, l. 13 to p. 10, l. 5.
[73] Exh. 27, p. 10, l. 6-10.
[74] Exh. 27, Schedule RBH-2.
[75] Exh. 27, Schedule RBH-2.

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Dated: August 29, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on all parties of record via electronic mail (e-mail) on this 29th day of August, 2014.

/s/James B. Lowery
James B. Lowery